**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL REVISION APPLICATION NO.32 OF 2004**

Haushila Prasad Vishwakarma ...Applicant

vs.

1.The State through
(C.B.I.,A.C.B. Mumbai)
2. The State of Maharashtra through
(Public Prosecutor) ...Respondents

Mr.A.P.Mundargi, Sr.Advocate with Mr.S.G.Deshpande for the Applicant
Mr.Y.M.Nakhwa A.P.P. for State
Mr.J.C.Satpute for Respondent No.1

**CORAM: A.S.OKA,J.**
**DATE : OCTOBER 18,2006.**

**JUDGMENT:**

1. This court on 14th October 2006 passed an order directing that notice shall be issued to the Respondents for final disposal at admission stage. Accordingly on 27th September 2006 this Revision Application was finally heard and was kept for orders on 12th October 2006. On that date the learned Advocate on record for the Applicant tendered written submissions and therefore the Judgment was not dictated on that date to enable this Court to go through the written submissions.

2. By this Revision Application, the Applicant has taken exception to the Judgment and Order dated 14th October 2003 passed by the learned Special Judge, Mumbai in Misc. Application No.144 of 2003 in Special Case No.23 of 2002. By

the said Judgment and Order, an application made by the Applicant for discharge has been rejected. The Applicant was at the relevant time Assistant Commissioner of Income Tax, Circle/Range 27 (1), Piramal Chamber, Parel, Mumbai. The Applicant is charged for offences punishable under sections 13(2), 13(1) (e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act of 1988). The allegation against the Applicant is of acquisition of assets disproportionate to his known sources of income to the tune of Rs.25,24,533.10 for the period from 1st January 1991 till 24th February 1999 on which date the search and seizure was conducted. It is alleged by the prosecution that the huge cash amount of Rs.7,26,670/- was found during the search of the house of the Applicant.

3. According to the prosecution case, income of the Applicant from the salary, interest on investments, survival benefit of L.I.C. policies and sale proceeds of the agricultural lands during the check period was Rs.7,74,773.50. His expenditure during the said period is given as Rs.4,48,400.46. His moveable assets are in the sum of Rs.11,97,394.12 and the cost of the agricultural land held by him is Rs.66,500/-.

4. According to the prosecution case, income of the elder son of the Applicant by name Santosh from various sources such as commission received from the Oriental Insurance Company, interest on bank balance, income from sale of diamonds, salary

from the service, agricultural income and income by sale of agricultural lands for the check period is 7,42,571.25. Total expenditure of said Santosh is mentioned as Rs.4,07,400/- and the moveable assets in his name are of Rs.3,00,296.52 and the immovable assets by way of agricultural land are worth Rs.4,29,358/-. According to the prosecution case, income of Sunil, the younger son of the Applicant aged about 27 years, by way of salary, interest, income from sale of diamonds, by way of agricultural land etc. is Rs.8,28,019.30. The expenditure incurred by the said son Sunil is stated as Rs.3,07,644/-. The moveable assets are worth Rs.3,81,164.34 and the cost of immovable assets held by him is Rs.1,78,000/-. The income of the wife of the Applicant by way of benefits received from Life Insurance Policy and interest on bank account for the check period is Rs.20,860.70. Expenditure incurred by her is stated as Rs.1,82,923.20. The total cost of moveable assets of the Applicant's wife is shown as Rs.65,943.57 and the price of flat standing in her name was assessed at Rs.9,53,000/-. According to the prosecution case, taking into consideration the entire income of the family of the Applicant, the disproportionate assets held by the Applicant and his family members are to the tune of Rs.25,24,533.10.

5. The learned Senior Counsel for the Applicant pointed out that the Central Bureau of Investigation has submitted along with the charge sheet the documents relating to the property

of the Applicant as well as the property held by the members of the family of the Applicant. He submitted that the documents produced along with the charge sheet itself contain an explanation given about the source of income for acquisition of the properties held by them. He submitted that even the calculation of the income received by the Applicant by way of salary and from other sources as reflected from the charge sheet is totally incorrect. He submitted that the documents produced along with the charge sheet establish that the assets held by the Applicant were not at all disproportionate to his income. He submitted that, in any event, the figure of disproportionate assets allegedly held by the Applicant as alleged by the prosecution is exorbitant even going by the documents produced along with the charge sheet. He submitted that to enable the Applicant to properly defend himself, the allegations of the prosecution have to be precise and accurate. He submitted the two major sons of the Applicants are having independent sources of income of their own. He submitted that after charge sheet is filed, the Applicant is entitled to seek exclusion of items which cannot sustain the prima facie assessment of the material produced by the prosecution. He has invited my attention to the chart marked at Exh.1 in the synopsis of the documents separately filed by the Applicant. He submitted that the arrears of Dearness Allowance and pay received by the Applicant from time to time have been ignored by the prosecution while calculating the total earnings of the Applicant. He submitted that there

are documents on record to show that the assets of the Applicants are not at all disproportionate to his known source of income. He placed reliance on the various decisions of the Apex Court. I have referred to the said decisions in the subsequent paragraphs of this order.

6. The learned A.P.P. supported the impugned order by submitting that there is sufficient prima facie evidence against the Applicant for proceeding against the Applicant.

7. The learned Counsel for the Applicant has placed reliance on the decision of the Apex Court in case of State of Madhya Pradesh Vs. Mohanlal Soni [(2000) 6 S.C.C. page 338]. In paragraph 7 of the said decision the Apex Court has held as under :

> "7. The crystalised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

8. In the light of the law laid down by the Apex court, the submissions of the learned Counsel for the Applicant will have to be appreciated. I have perused the documents forming part

of the charge sheet. The details of income received from the salary and other sources by the Applicant are on record. Even the details of the income of the two major sons of the Applicant are on record. The allegation of the prosecution is that after taking into account the income of the Applicant and his family members from their known sources of income, the assets held by the Applicant and his family members are completely disproportionate to the said known sources of income. One of the submissions made is that the entire income of the Applicant is not considered and the arrears received on account of Dearness Allowance and salary are not accounted for. This is surely a matter of evidence before the learned Special Judge. The Applicant has produced a chart showing details of the income received by him. He has placed reliance on certain assessment orders passed by the Income Tax Department. He has also placed reliance on various documents showing independent source of income of the sons. The charge sheet contains details as to how the total assets of the Applicant and his family members are grossly disproportionate to the known sources of earning of the Applicant and his family members. There are large number of documents produced along with the charge sheet in support of the said allegations. What has been argued before this Court is the defence of the Applicant in the trial. The figures of earnings of the Applicant are part of the charge sheet. The valuation of the assets held by the Applicant is also reflected in the charge sheet. Perusal of the same shows that

there is sufficient ground for proceeding against the Applicant as prima facie the assets held by the Applicant and his family members are disproportionate.

9. The learned Counsel for the Applicant relied upon the decision of the Apex Court in case of D.S.P. Chennai Vs. K.Inbasagaran [(2006) 1 S.C.C. page 420]. The said decision does not deal with the parameters for consideration of the application for discharge. An Appeal before the Apex Court arose out of order of acquittal passed by the High Court in favour of the Respondent in a case where he was prosecuted under section 13(2) (13) (1) (e) of Prevention of Corruption Act, 1988. Reliance is also placed on paragraph 17 of the said decision which reads thus :

> "17. Now, in this background, when the accused has come forward with the plea that all the money which has been recovered from his house and the purchase of real estate or the recovery of the gold and other deposits in the bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money be laid at his hands. The question is, when the accused has provided satisfactory explanation that all the money belonged to his wife and she has owned it and the Income Tax Department has assessed it in her hand, then, in that case, whether he could be charged under the Prevention of Corruption Act. It is true

that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband as the case may be, it cannot be fastened on the husband or the head of the family. It is true that the prosecution in the present case has tried its best to lead evidence to show that all these monies belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the income tax returns and she has accepted the whole responsibility, in that case, it is very difficult to hold the accused guilty of the charge. It is very difficult to segregate that how much of the wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being a public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the

other witnesses who have been produced on behalf of the accused, coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income Tax Department, it will not be proper to hold the accused guilty under the Prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and that it belonged to his wife."

This Judgment will not help the Applicant at this stage when there is a prima facie material on record to proceed against the Applicant. At this stage, court is not required to appreciate evidence to conclude whether it is sufficient or not for convicting the accused. Same is the case with the decision of the Apex Court in case of State of Maharashtra Vs.Pollonji Darabshaw Daruwalla (A.I.R. 1988 S.C. page 88). The Apex Court in the said case was dealing with an Appeal arising out of order of acquittal passed after a regular trial.

10. What the Applicant has called upon this Court to do is to appreciate the material produced by him at the stage of

framing charge and to record a finding that there was sufficient income to justify the cost of the assets. When the charge sheet contains the documents which in turn contain the sufficient prima facie material to show that the assets held are disproportionate to income, an order of discharge cannot be passed.

11. After having considered the submissions of the learned Counsel for the Applicant and after perusing the impugned order, I find that there is no error in the view taken by the learned Trial Judge. Hence, I pass the following order :

. Revision Application is rejected.

**JUDGE**